

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 827 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAJAPATI GORDHANBHAI KESHAVBHAI

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner

MR S.D.TALATI ASSTT.GP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/03/98

ORAL JUDGEMENT

The petitioner before this Court is a former employee of the respondent Government and is seeking absorption in Government Service. The facts leading to the present petition are as under :

2. It appears that under order dated 5th January, 1987, some posts in Class IV service were created in the

Finance Department of the Secretariat. With a view to filling in the said vacancies, under order dated 10th February, 1987, four persons including the petitioner herein were appointed as peons and some five persons were appointed as Hamals. Said appointment was temporary. It further appears that the said appointment continued upto 31st May, 1987. The petitioner, thereafter, was appointed as Hamal on 1st June, 1987 on temporary basis. Thereafter, he was again appointed as peon with effect from 1st October, 1987. On 18th March, 1988, post of peon was abolished and the petitioner being the junior most, was relieved from service. Feeling aggrieved, the petitioner preferred appeal before the Gujarat Civil Service Tribunal being Appeal NO. 324 of 1988. Petitioner challenged the order of termination of his service and also claimed absorption in service. The tribunal under its judgment and order dated 31st August, 1988, held that the appointment of the petitioner as peon was temporary and that the petitioner was at the relevant time junior most peon in the Finance Department. One more peon i.e. Baldevbhai who was appointed alongwith the petitioner on 10th February, 1987 and was junior to the petitioner was relieved long before and, thus, the petitioner was junior most. It further observed that two other peons who were appointed alongwith the petitioner and who were absorbed in other Departments of the Secretariat were in fact senior to the petitioner. The tribunal also examined the petitioner's claim for absorption as Hamal. The tribunal found that the posts of peon and the posts of Hamal though both belong to Class-IV service were essentially different. The post of peon could be filled in either by transfer of Hamal possessing requisite qualification or by direct recruitment. Necessary qualification for appointment as peon is the education upto Std. IV. So far as the post of Hamal is concerned, it can be filled exclusively by direct recruitment and no educational qualification is prescribed for such appointment. The tribunal, therefore, upheld the action of the respondents in relieving the petitioner as having become surplus. The same was not challenged further and thus has become final.

It appears that after relieving the petitioner from service, certain appointments were made in the Finance Department of Sachivalaya in Class-IV service. However, the petitioner was not recalled for such appointment. Feeling aggrieved, the petitioner has preferred this petition.

Mr. Jhaveri, the learned advocate appearing for the petitioner has submitted that the action of the

respondents in not absorbing the petitioner is arbitrary and discriminatory. Alongwith the petitioner, three other persons were also appointed as peon two of whom have been absorbed in the other Departments of the Secretariat. There was no earthly reason why the petitioner should not have been absorbed in any other department of Secretariat as and when such vacancy became available. He has further claimed that several persons have been appointed in the Finance Department in the year 1994 as peons and Hamals and the petitioner should have been recalled for such appointment in preference to fresh recruitment. Mr. Jhaveri has also submitted that the action of the respondents is contrary to the provisions made in the Industrial Disputes Act, 1947.

It is not disputed that at the time of his relief from service on 18th March, 1988, the petitioner was the junior most amongst the peons. On perusal of the recruitment rules for the peons and the Hamal reproduced in the order of the learned tribunal, it is apparent that both the posts are different and distinct. In my view, therefore, the petitioner cannot claim absorption in or appointment to the post of Hamal even if such post were available. Further, I am of the view that the Finance Department of the Secretariat cannot be said to be an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947 and the provisions made thereunder cannot be invoked to buttress the claim made by the petitioner. Mr. Jhaveri has not pointed out any rule of the Bombay Civil Service Rules which enjoins upon the State Government to recall its employees who have earlier been rendered surplus and have been relieved from service. In my view, therefore, the petitioner could not have claimed absorption in service as a peon as a matter of right.

It is true that two of the peons appointed alongwith the petitioner have been absorbed in the other Departments of the Secretariat. However, both of them being senior to the petitioner, it cannot be said that the petitioner has been meted discriminatory treatment as has been argued by Mr. Jhaveri. It is evident that alongwith the said peon, the petitioner could not be absorbed in any other Department of the Secretariat for want of vacancy. If the petitioner could not be absorbed at the relevant time for want of vacancy, the action can neither be said to be arbitrary nor discriminatory.

The factum of appointment of several peons and Hamals in the year 1994 has not been disputed. It is, however, explained that the said appointments were made

on daily rated basis for a period of a month or two. It is further contended that no regular appointment of peon has been made in the Finance Department of the Secretariat since 18th March, 1988. In that view of the matter, the action of the respondents in not calling the petitioner for daily rated service for a month or two cannot be said to be arbitrary or discriminatory. Further, I am of the view that the petitioner had neither had a fundamental nor a statutory right to absorption in Government service. If at the relevant time, the vacancy were available, he could have been absorbed on such vacancy. However, the petitioner cannot claim right to appointment to a future vacancy i.e. the respondents cannot be expected to recall the petitioner as and when the vacancy arises even years after his relief from service. Besides, the petitioner may not be even eligible for appointment as and when the vacancy arises. I am, therefore, of the opinion that the petitioner has no right to absorption merely because he was once appointed on temporary basis as a peon.

Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

Mr. Jhaveri has requested that the interim order made on 24th June, 1997 be continued for a period of fifteen days so as to enable the petitioner to prefer appeal. It appears that on 24th June, 1997, this Court, (Coram:S.K.Keshote, J.) made the order as under :

"Rule; returnable on 1st August, 1997. Till then, the respondent No. 1 is restrained from making any adhoc temporary, regular or even daily wage appointment on the post of Class-IV."

Above interim order which was operative till 1st August, 1997 has since been not extended further. The matter was adjourned time and again during the month of August, 1997 to December, 1997. However, no order in respect of interim order has been made thereafter. Since no interim order is operating today as stated hereinabove, the question of extending interim relief would not arise. Request is, therefore, rejected.
